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17 Attorneys for Defendant
18 SIEMENS MOBILITY, INC.

REED SMITH LLP
A limited liability partnership formed in the State of Delaware

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

19 MARQUIS WALKER, an individual,

Case No.

20 Plaintiff,

[Superior Court of California, Sacramento
21 County Case No. 34-2022-00331504-CU-OE-
vs.
22 GDS]

23 SIEMENS MOBILITY, INC., a Delaware
24 corporation; and DOES 1 through 10,
25 Inclusive,

**DECLARATION OF JEFFREY ELKRIEF IN
SUPPORT OF REMOVAL**

26 Defendants

*[Filed concurrently with Civil Cover Sheet,
Notice of Removal, Declaration of Tami
Wolownik, and Corporate Disclosure Statement]*

27 Complaint Filed: December 16, 2022
28 Trial Date: None

1 I, JEFFREY ELKRIEF, declare as follows:

2 1. I am an attorney duly admitted to practice in the State of California and before this
3 Court. I am an associate with Reed Smith LLP, attorneys of record for Defendant Siemens Mobility,
4 Inc. ("Siemens"). I submit this declaration in support of Siemens' Notice of Removal. I have personal
5 knowledge of the following facts and, if called and sworn as a witness, could and would testify
6 competently thereto.

7 2. Attached hereto as **Exhibit A** is a true and correct copy of the Complaint served upon
8 Siemens on January 17, 2023 in the action entitled *Marquis Walker v. Siemens Mobility, Inc., a
9 Delaware corporation; and Does 1 through 10, Inclusive*, Case No. 34-2022-00331504-CU-OE-GDS,
10 in the Superior Court of the State of California for the County of Sacramento (the "State Court
11 Action").

12 3. Attached hereto as **Exhibit B** is a true and correct copy of the Summons served upon
13 Siemens on January 17, 2023 in the State Court Action.

14 4. Attached hereto as **Exhibit C** is the Notice of Case Management Conference and Order
15 to Appear served upon Siemens on January 17, 2023 in the State Court Action.

16 5. Attached hereto as **Exhibit D** is a true and correct copy of the Answer Siemens filed
17 and served on February 1, 2023 in the State Court Action.

18 7. Exhibits A through D constitute true and correct copies of all process, pleadings, and
19 orders in the State Court Action within the meaning of 28 U.S.C. § 1446(a).

20 Executed on this 8th day of February, 2023, at Los Angeles, California.

21 I declare under penalty of perjury under the laws of California and the United States of
22 America that the foregoing is true and correct.

23
24 /s/ Jeffrey Elkrief
Jeffrey Elkrief

EXHIBIT A

FRED
Superior Court Of California,
Sacramento
12/16/2022
spetm
By _____, Deputy
Case Number:
34-2022-00331504

1 RAFII & ASSOCIATES, P.C.
2 Robert Montes, Jr. (SBN 159137)
3 robert@rafiilaw.com
4 9100 Wilshire Boulevard, Suite 465E
5 Beverly Hills, California 90212
6 Telephone: 310.777.7877
7 Facsimile: 310.777.7855

5 Attorneys for PLAINTIFF MARQUIS WALKER

**THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO**

MARQUIS WALKER, an individual,

Case No.

PLAINTIFF,

**PLAINTIFF'S COMPLAINT FOR
DAMAGES:**

SIEMENS MOBILITY, INC.; and
DOES 1 through 10, inclusive.

1. RACIAL DISCRIMINATION;
 2. FAILURE TO PREVENT RACIAL DISCRIMINATION; RETALIATION - FEHA [Govt. Code § 12940(h) & Govt. Code §12653];
 3. RETALIATION (Lab. Code §98.6 and § 1102.05);
 4. CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

Defendants

DEMAND FOR JURY TRIAL

PLAINTIFF, MARQUIS WALKER (hereinafter "WALKER" or "Plaintiff") complains against SIEMENS MOBILITY, INC. and DOES 1 through 10 (collectively "Defendants"), and pleads upon information and belief as follows:

L.

JURISDICTION

1. This is a civil action seeking recovery of damages for Race Discrimination, Failure to Prevent Race Discrimination and Retaliation in violation of public policy. At all relevant times

1 herein, PLAINTIFF was a resident of California, in the County of Sacramento.

2 2. The claims, transactions, obligations complained of herein occurred within the
3 County of Sacramento, State of California.

4 3. Defendants either own, maintain offices, manage, employ individuals, transact
5 business, *i.e.* DEFENDANT services include providing insulation products and services, offers
6 metal foils, blankets, and molded insulators, as well as tooling fabrication, engineering, and
7 warehousing services, has an agent or agents, or live within the County of Sacramento, or otherwise
8 is found within the County of Sacramento and each DEFENDANT is within the jurisdiction of this
9 Court for purpose of service of process.

10 4. The true names and capacities of the DOES 1 through 10, inclusive, whether
11 individual, corporate, associate or otherwise, are unknown to PLAINTIFF at the time of filing this
12 Complaint and PLAINTIFF therefore, sue said Defendants by such fictitious names and will ask
13 leave of Court to amend this Complaint to show their true names or capacities when the same have
14 been ascertained. PLAINTIFF are informed and believe, and thereon allege, that each of the DOE
15 Defendants is, in some manner, responsible for the events and happenings herein set forth and
16 proximately caused injury and damages to PLAINTIFF as herein alleged.

17 5. At all times herein mentioned, PLAINTIFF alleges that each of the Defendants were
18 the agents, principals, partners, associates, joint venturers, shareholder, director, member, co-
19 conspirator, alter-ego, master, or partner of each of the remaining co-Defendants; that the
20 Defendants, and each of them, were at all times acting within the course, purpose and scope of said
21 agency, partnership, association, joint venture employment and/or conspiracy and that the
22 Defendants, and each of them, were acting with the full knowledge, agreement, authorization,
23 ratification, either express or implied, permission and/or consent of the remaining co-Defendants
24 and are, therefore liable, vicariously and/or otherwise, jointly and severally, for the damages and
25 injury they caused to PLAINTIFF.

26 6. Defendants, and each of them, are individually, jointly, and severably liable as the
27 employer of PLAINTIFF because each DEFENDANT directly or indirectly, or through an agent or



1 another person, employed or exercised control over PLAINTIFF'S wages, hours, and working
2 conditions. At all times mentioned herein, the acts and omissions of various Defendants, and each
3 of them, concurred and contributed to the various acts and omissions of each and every one of the
4 other Defendants in proximately causing the complaints, injuries, and damages alleged herein.
5 Furthermore, whenever this Complaint makes reference to "DEFENDANT" or "Defendants," such
6 allegations shall be deemed to mean the acts of Defendants, and each of them, acting individually,
7 jointly, and/or severally.

8 7. At all times mentioned herein, Defendants, and each of them, approved of, condoned
9 and/or otherwise ratified each and every one of the acts or omissions complained of herein. At all
10 times herein mentioned, Defendants, and each of them, aided and abetted the acts and omissions of
11 each and every one of the other Defendants thereby proximately causing the damages as herein
12 alleged.

II.

PARTIES

15 8. PLAINTIFF, MARQUIS WALKER, is over the age of eighteen (18) and a former
16 employee of DEFENDANTS. Plaintiff was initially hired as a Blaster and subsequently held the
17 position of Straightener (I). Plaintiff commenced his employment with Defendants on January 27,
18 2020.

19 9. Upon information and belief, PLAINTIFF alleges that SIEMENS MOBILITY, INC.,
20 has its corporate headquarters and principal place of business located at One Penn Plaza, suite 1100,
21 New York, New York 10119. SIEMENS MOBILITY, INC. employs 36,800 people worldwide.
22 DEFENDANT'S services include providing rail vehicles, locomotives, components, and systems.

III.

VENUE

25 10. Venue as to each DEFENDANT is proper in this judicial district pursuant to
26 California Code of Civil Procedure sections 395(a) and 395.5 since at least some of the obligations,
27 liabilities, and breaches complained of herein arose or occurred in Sacramento County. Each

1 DEFENDANT either owns, maintains offices, manages, transacts business, has agent or agents, or
2 lives within Sacramento County, or otherwise is found within Sacramento County and each
3 DEFENDANT is within the jurisdiction of this Court for purpose of service of process.

4 11. The unlawful acts, omissions and violations of the California Fair Employment &
5 Housing Act (hereinafter "FEHA") alleged herein were committed by Defendants in the County of
6 Sacramento, State of California and the amount of damages sought by PLAINTIFF herein exceeds
7 the minimum jurisdictional limits of the Court. Furthermore, on August 15, 2022, PLAINTIFF filed
8 charges against SIEMENS MOBILITY, INC. with the Department of Fair Employment and
9 Housing and received her notification of her right-to-sue on the same date. Attached hereto as
10 **EXHIBIT "A"** and incorporated herein by reference is a true and correct copy of the FEHA right-
11 to-sue letter.

12 **IV.**

13 **GENERAL ALLEGATIONS**

14 12. Plaintiff was hired as a Blaster by Defendants in 2016, initially as a temporary
15 worker and then he became a permanent worker after approximately 2 ½ years. The majority of
16 individuals working with Plaintiff were Hispanic and Plaintiff was the only African American out
17 of approximately 40 people and Plaintiff was 1 of only 2 African Americans employed by
18 Defendants at the Sacramento facility. Eudz Lebuts was in a management position at the facility and
19 he was the only other African American besides Plaintiff.

20 13. According to Defendant's online web site, their Sacramento facility employs more
21 than 2,100 people across various sectors, including rail manufacturing and service operations as
22 well as building technologies at the Siemens Mobility's 60-acre facility.

23 14. Byron Reyes and Jose Novate were lead/managers at the Sacramento facility.

24 15. Byron Reyes offered Plaintiff a lead position and Plaintiff was in charge of a crew
25 of three (3), training them on how to do their job. Plaintiff was given the crew because he was told
26 that he was going to get the lead position and he even filled out an application for that lead position.
27 Even though Plaintiff was promised the lead position and undertook the work associated with that

1 position, he performed managerial duties and communicated with upper management without
2 receiving manager pay and he was never given the promised lead position.

3 16. Safety meetings were conducted in Spanish. When manager Jose Novate would
4 explain things to staff, he would communicate in Spanish, making it difficult for Plaintiff to
5 understand what was being asked or instructed.

6 17. When lead/managers Byron Reyes and Jose Novate got mad at Plaintiff or wanted
7 things to be done, they told Plaintiff that Euds Lebuts was his “dad” or “Tio” because they were
8 both black.

9 18. Lead/managers Byron Reyes and Jose Novate often made the statements, “have
10 Brown Sugar go do that” or “Brown Sugar will do it” or “have Brown Sugar train him”, referring
11 to Plaintiff as “Brown Sugar”.

12 19. Plaintiff advised Defendants of the derogatory names he was being called and he
13 filed a complaint with HR who did an “investigation”. During the investigation, Plaintiff met with
14 an individual named Jessie whom Plaintiff is informed and believes has a close relation with Byron
15 Reyes. Plaintiff was shocked when Jessie told Plaintiff, “Well, Euds is not really black, he is just a
16 little darker.” Plaintiff asked to speak with an HR Manager.

17 20. Subsequent to his complaints, Plaintiff was treated differently by management and
18 other staff. They would “mean mug” him, give him dirty looks and nobody would talk to him.

19 21. When Plaintiff was subjected to this hostile environment, he asked for a transfer to
20 another department. The position for a welder was no longer “available” and he was placed as a
21 “straightener”. Subsequent to his complaints and transfer, Plaintiff went to work and sometimes
22 there was “no work” for him and he would just have to sweep the floors for the entire day.

23 22. In addition to being ostracized and put on floor sweeping duties, even though
24 Defendant’s policies required them to give Plaintiff 2-weeks notice before changing his schedule,
25 defendants would text Plaintiff last minute to not come to work.

26 23. The final insult and retaliation against Plaintiff was a reduction of his work hours
27 from full time, 40-60 hours/week to 1-2 days a week. As a result of this constructive termination,

Plaintiff was forced to seek employment elsewhere.

24. PLAINTIFF has suffered financially and emotionally as a result of DEFENDANT'S multiple forms of discrimination, retaliation, and constructive termination.

25. PLAINTIFF now commences this suit against DEFENDANT, and alleges the following:

V.

FIRST CAUSE OF ACTION FOR RACIAL DISCRIMINATION

GOVERNMENT CODE § 12940(a)

(Against All Defendants)

26. Plaintiff re-alleges and incorporates paragraphs 1 through 24, inclusive, of this Complaint as though fully set forth herein.

27. Government Code § 12940(a) states that “it is an unlawful employment practice for an employer, **because of the race**, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status **of any person**, to refuse to hire or employ the person or to refuse to select the person for a training program leading to employment, or to bar or to discharge the person from employment or from a training program leading to employment, or **to discriminate against the person** in compensation or in **terms, conditions, or privileges of employment**. [emphasis added]

28. PLAINTIFF, at all times relevant hereto, was an “employee” of Defendants, as defined by Government Code § 12926(c), for the purposes of Government Code § 12940(a).

29. Defendants were at all material times “employers,” as defined by Government Code § 12926(d) and, as such, were barred from discriminating in employment decisions on the basis of physical disability, as set forth in Government Code § 12940.

30. Defendants discriminated against PLAINTIFF on the basis of his Race, in violation of Government Code § 12940(a), Article I of the California Constitution, and related statutes by engaging in the course of conduct more fully set forth elsewhere herein, including by changing his

work assignment with a pay cut to avoid “future incidents” and failing to timely pay PLAINTIFF on at least 3 occasions, and such discriminatory conduct was a substantial factor in causing the harm to PLAINTIFF alleged herein.

31. Defendants authorized and ratified the wrongful acts of their agents and employees, knew in advance that their agents and employees were likely to commit such acts and employed them with conscious disregard of the rights or safety of others, and/or their officers, directors, or managing agents were themselves guilty of oppression and malice.

32. As a result of DEFENDANTS' unlawful discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer (a) substantial humiliation, serious mental anguish, and emotional and physical distress; and (b) loss of past and future earnings, status and future status, and employment benefits and opportunities, on account of which PLAINTIFF is entitled to compensatory damages in an amount to be established according to proof at trial. PLAINTIFF claims such amount together with prejudgment interest pursuant to Civil Code § 3287 or 3288 and any other applicable provision of law.

33. The race discrimination committed by Defendants was intentional, malicious, wanton, and oppressive, with a conscious disregard for PLAINTIFF'S rights and with the intent to vex, injure, punish, and annoy PLAINTIFF so as to cause PLAINTIFF the injuries alleged herein. Such acts amount to oppression and malice, as described in Civil Code § 3294. PLAINTIFF is therefore entitled to punitive or exemplary damages in an amount sufficient to punish and make an example out of Defendants.

34. As a further direct and proximate result of DEFENDANTS' violation of Government Code § 12940(a), PLAINTIFF has been compelled to retain the services of counsel and will continue to incur legal fees and costs. PLAINTIFF requests an award of such attorneys' fees and costs pursuant to Government Code § 12965(b).

VI.

SECOND CAUSE OF ACTION

FAILURE TO PREVENT RACIAL DISCRIMINATION AND HARASSMENT

GOVERNMENT CODE § 12940(k)

(Against all Defendants)

35. PLAINTIFF re-alleges and incorporates paragraphs 1 through 33, inclusive, of this
4 Complaint as though fully set forth herein.

36. PLAINTIFF, at all times relevant hereto, was an “employee” of Defendants, as
6 defined by Government Code § 12926(c), for the purposes of Government Code § 12940(k), which
7 makes it an unlawful employment practice for an employer to fail to take all reasonable steps
8 necessary to prevent discrimination and harassment from occurring. The employer's duty to prevent
9 harassment and discrimination is affirmative and mandatory. (Northrop Grumman Corp. v.
10 Workers' Camp. Appeals Bd. (2002) 103 Cal.App.4th 1021, 1035.)

37. As described more fully elsewhere herein, PLAINTIFF was subjected to unlawful
12 discrimination in the course of PLAINTIFF'S employment with Defendants.

38. Defendants failed to take all reasonable steps necessary to prevent the discrimination
14 and harassment suffered by PLAINTIFF, in violation of Government Code § 12940(k), and such
15 failure was a substantial factor in causing the harm to PLAINTIFF alleged herein.

39. Specifically, Defendants failed to take any preventative or ameliorative action
17 against those managers, supervisors, and employees who were discriminating against PLAINTIFF
18 or enabling others to do so based upon his Race. If Defendants have a written policy addressing the
19 issue of discrimination, that policy is not enforced and is consistently disregarded.

40. Defendants authorized and ratified the wrongful acts of their agents and employees,
21 knew in advance that their agents and employees were likely to commit such acts and employed
22 them with conscious disregard of the rights or safety of others, and/or their officers, directors, or
23 managing agents were themselves guilty of oppression and malice

41. In engaging in the aforementioned conduct, Defendants aided, abetted, incited,
25 compelled, and/or coerced unlawful employment practices in violation of Government Code §
26 12940(i) and the announced policy of this State against such practices.

42. As a result of Defendants' failure to prevent the unlawful discrimination

1 described herein, Plaintiff has suffered and continues to suffer (a) substantial humiliation, serious
2 mental anguish, and emotional and physical distress; and (b) loss of past and future earnings, status
3 and future status, and employment benefits and opportunities, on account of which Plaintiff is
4 entitled to compensatory damages in an amount to be established according to proof at trial. Plaintiff
5 claims such amount together with prejudgment interest pursuant to Civil Code § 3287 or 3288 and
6 any other applicable provision of law.

7 43. The failure of Defendants to prevent the unlawful discrimination suffered by
8 Plaintiff was intentional, malicious, wanton, and oppressive, with conscious disregard for Plaintiff's
9 rights and with the intent to vex, injure, punish, and annoy Plaintiff so as to cause Plaintiff the
10 injuries alleged herein. Such acts amount to oppression and malice, as described in Civil Code §
11 3294. Plaintiff is therefore entitled to punitive or exemplary damages in an amount sufficient to
12 punish and make an example out of Defendants.

13 44. As a direct and proximate result of Defendants' Violation of Government Code
14 §12940(k), Plaintiff has been compelled to retain the services of counsel and will continue to incur
15 legal fees and costs. Plaintiff requests an award of such attorneys' fees and costs pursuant to
16 Government Code §12965(b).

VII.

THIRD CAUSE OF ACTION

RETALIATION- FEHA |Govt. Code § 12940(h) & Govt. Code §12653

(Against All Defendants)

21 45. Plaintiff re-alleges and incorporates paragraphs 1 through 43, inclusive, of this
22 Complaint as though fully set forth herein.

23 46. Government Code section 12940(h) provides that it is an unlawful employment
24 practice "[f]or any employer, labor organization, employment agency, or person to discharge, expel,
25 or otherwise discriminate against any person because the person has opposed any practices
26 forbidden under this part or because the person has filed a complaint, testified, or assisted in any
27 proceeding under this part."

1 47. The Fair Employment and Housing Commission's regulations provide: "It is
2 unlawful for an employer or other covered entity to demote, suspend, reduce, fail to hire or consider
3 for hire, fail to give equal consideration in making employment decisions, fail to treat impartially in
4 the context of any recommendations for subsequent employment which the employer or other
5 covered entity may make, adversely affect working conditions or otherwise deny any employment
6 benefit to an individual because that individual has opposed practices prohibited by the Act or has
7 filed a complaint, testified, assisted or participated in any manner in an investigation, proceeding,
8 or hearing conducted by the Commission or Department or their staffs." (Cal. Code Regs., tit. 2, §
9 7287.8(a).)

10 48. Subsequent to his complaints, Plaintiff was treated differently by management and
11 other staff. They would "mean mug" him, give him dirty looks and nobody would talk to him.

12 49. Retaliation against Plaintiff took the form of a hostile environment which caused
13 PLAINTIFF to request a transfer to another department. The position for a welder was no longer
14 "available" and he was placed as a "straightener". In addition to being treated differently by
15 management, Defendants retaliated against Plaintiff when he went to work and he was told there
16 was "no work" for him and he would just have to sweep the floors for the entire day.

17 50. In addition to being ostracized and put on floor sweeping duties, Plaintiff alleges on
18 information and belief that even though Defendant's policies required them to give PLAINTIFF 2-
19 weeks notice before changing his schedule, Defendants would text PLAINTIFF last minute to not
20 come to work.

21 51. The final retaliation against PLAINTIFF was a reduction of his work hours from full
22 time, 40-60 hours/week to 1-2 days a week. As a result of this retaliation and constructive
23 termination, PLAINTIFF was forced to seek employment elsewhere.

24 52. Under Gov. Code section 12653:

25 "(a) Any employee, contractor, or agent shall be entitled to all relief necessary to make that
26 employee, contractor, or agent whole, if that employee, contractor, or agent is discharged,
27 demoted, suspended, threatened, harassed, or in any other manner discriminated against in the

1 terms and conditions of his or her employment because of lawful acts done by the employee,
2 contractor, agent, or associated others in furtherance of an action under this section or other
3 efforts to stop one or more violations of this article.

4 53. PLAINTIFF was retaliated against and harassed for complaining about FEHA or
5 perceived FEHA violations after asserting his rights as an employee.

6 54. As a proximate result of DEFENDANTS' conduct, PLAINTIFF has sustained and
7 continues to sustain substantial losses in his earnings and other employment benefits and continues
8 to suffer humiliation, emotional distress, and mental and physical pain and anguish, in addition to
9 interest, attorneys' fees, and costs, as necessary and according to proof.

10 55. DEFENDANTS' conduct as described above was willful, despicable, knowing, and
11 intentional; accordingly, PLAINTIFF seeks an award of punitive and exemplary damages in an
12 amount according to proof.

13 **VIII.**

14 **FOURTH CAUSE OF ACTION**

15 **RETALIATION (Lab. Code §98.6 and § 1102.05)**

16 56. PLAINTIFF hereby incorporates all other paragraphs of this complaint herein as if
17 set forth in full.

18 57. PLAINTIFF alleges that Labor Code section 98.6 states:

19 “(a) A person shall not discharge an employee or in any manner discriminate, retaliate, or take
20 any adverse action against any employee or applicant for employment because the employee
21 or applicant engaged in any conduct delineated in this chapter, including the conduct described
22 in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of
23 Division 2, or because the employee or applicant for employment has filed a bona fide
24 complaint or claim or instituted or caused to be instituted any proceeding under or relating to
25 his or her rights that are under the jurisdiction of the Labor Commissioner, made a written or
26 oral complaint that he or she is owed unpaid wages, or because the employee has initiated any
27 action or notice pursuant to Section 2699, or has testified or is about to testify in a proceeding

1 pursuant to that section, or because of the exercise by the employee or applicant for
2 employment on behalf of himself, herself, or others of any rights afforded him or her.”
3 (*emphasis added*)

4 58. PLAINTIFF alleges that he was retaliated against after he complained of his working
5 conditions and ongoing racial discrimination.

6 59. PLAINTIFF alleges that Labor Code section 1102.5(f) states, “In addition to other
7 penalties, an employer that is a corporation or limited liability company is liable for a civil penalty
8 not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

9 60. PLAINTIFF alleges that further that under Labor Code section 1102.5(c), “an
10 employer, or any person acting on behalf of the employer, shall not retaliate against an employee for
11 refusing to participate in an activity that would result in a violation of state or federal statute, or a
12 violation of or noncompliance with a local, state, or federal rule or regulation.”

13 61. PLAINTIFF alleges that DEFENDANTS’ actions described throughout this complaint
14 puts Defendants in violation of Govt. Lab. Code §98.6 and Lab. Code §1102.5.

15 62. WHEREFORE, PLAINTIFF requests relief as hereinafter provided.

16
17 IX.

18 **FIFTH CAUSE OF ACTION**

19 **CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY**

20 63. PLAINTIFF hereby incorporates all other paragraphs of this complaint herein as if
21 set forth in full.

22 64. PLAINTIFF alleges that he was subjected to working conditions that violated public
23 policy, and in that PLAINTIFF was required to work under conditions that were in violation to
24 California Labor Laws, inclusive of being subjected to racial discrimination and retaliation among
25 other things.

26 65. PLAINTIFF alleges that Defendants intentionally created or knowingly permitted
27 these working conditions.

1 66. PLAINTIFF alleges that those working conditions were so intolerable that a
2 reasonable person in PLAINTIFFS' position would have had no reasonable alternative except to
3 resign.

4 67. PLAINTIFF alleges that he complained to Defendants regarding the numerous
5 California Labor Code violations committed by Defendants, however, Defendants ignored
6 PLAINTIFFS' complaints.

7 68. PLAINTIFF alleges that he was constructively discharged because of these
8 working conditions.

9 69. PLAINTIFF alleges that he was harmed.

10 70. PLAINTIFF alleges that the working conditions were a substantial factor in causing
11 PLAINTIFF'S harm.

12 71. WHEREFORE, PLAINTIFF requests relief as hereinafter provided.

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PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF respectfully prays for judgment against Defendants, and each of them, according to proof, as follows:

- (a) For compensatory damages;
 - (b) For special damages, according to proof;
 - (c) For mental and emotional distress damages;
 - (d) For punitive and exemplary damages;
 - (e) For an award of interest, including prejudgment interest, at the maximum legal rate;
 - (f) For reasonable attorneys' fees;
 - (g) For costs of suit; and
 - (h) For such other and further relief as the Court may deem just and proper.

DATED: December 15, 2022

Respectfully submitted,

RAFII & ASSOCIATES, P.C.

By:

Robert Montes, Jr.
Attorneys for PLAINTIFF
MARQUIS WALKER

JURY DEMAND

PLAINTIFF demands a trial by jury on all issues that may be tried by a jury.

Dated: December 15, 2022

RAFII & ASSOCIATES, P.C.

By:

Robert Montes, Jr.
Attorneys for PLAINTIFF
MARQUIS WALKER

EXHIBIT “A”

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

August 15, 2022

Malek Shraibati
9100 Wilshire Boulevard
suite 465E
Beverly Hills, CA 90212

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202208-17927215
Right to Sue: Walker / Siemens Mobility, Inc.

Dear Malek Shraibati:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

KEVIN KISH, DIRECTOR

August 15, 2022

RE: Notice of Filing of Discrimination Complaint

DFEH Matter Number: 202208-17927215

Right to Sue: Walker / Siemens Mobility, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlinerequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfdh.ca.gov

KEVIN KISH, DIRECTOR

Department of Fair Employment and Housing

**DEPARTMENT OF FAIR EMPLOYMENT & HOUSING**

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

August 15, 2022

Marquis Walker
8915 Great Rock Circle
Sacramento, CA 95829

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202208-17927215
Right to Sue: Walker / Siemens Mobility, Inc.

Dear Marquis Walker:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective August 15, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlinerequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

KEVIN KISH, DIRECTOR

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Marquis Walker

DFEH No. 202208-17927215

8 Complainant,

9 vs.

10 Siemens Mobility, Inc.
11 7464 French Road
12 Sacramento, CA 95828

13 Respondents

14

15 1. Respondent **Siemens Mobility, Inc.** is an **employer** subject to suit under the California Fair
16 Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

17

18 2. Complainant **Marquis Walker**, resides in the City of **Sacramento**, State of **CA**.

19

20 3. Complainant alleges that on or about **June 3, 2022**, respondent took the following
21 adverse actions:

22

23 **Complainant was discriminated against** because of complainant's race and as a result of
24 the discrimination was forced to quit.

25

26 **Additional Complaint Details:** Plaintiff was hired by Defendant Siemens Mobility, Inc., as a
27 Blaster by Defendants in 2016, initially as a temporary worker
28 and then he became a permanent worker after approximately 2 ½ years. The majority of
 individuals working with Plaintiff were Hispanic and Plaintiff was the only African American
 out of approximately 40 people and Plaintiff was 1 of only 2 African Americans employed by
 Defendants at the Sacramento facility. Eudz Lebuts was in a management position at the
 facility and he was the only other African American besides Plaintiff. According to
 Defendant's online web site, their Sacramento facility employs more than 2,100 people
 across various sectors, including rail manufacturing and service operations as well as
 building technologies at the Siemens Mobility's 60-acre facility. Byron Reyes and Jose

1 Novate were lead/managers at the Sacramento facility. Byron Reyes offered Plaintiff a lead
2 position and Plaintiff was in charge of a crew of
3 three (3), training them on how to do their job. Plaintiff was given the crew because he was
4 told that he was going to get the lead position and he even filled out an application for that
lead position. Even though Plaintiff was promised the lead position and undertook the work
associated with that position, he performed managerial duties and communicated with upper
management without receiving manager pay and he was never given the promised lead
position.
5

6 Safety meetings were conducted in Spanish. When manager Jose Novate would explain
7 things to staff, he would communicate in Spanish, making it difficult for Plaintiff to
understand what was being asked or instructed. When lead/managers Byron Reyes and
8 Jose Novate got mad at Plaintiff or wanted things to be done, they told Plaintiff that Euds
Lebuts was his "dad" or "Tio" because they were both black. Lead/managers Byron Reyes
9 and Jose Novate often made the statements, "have Brown Sugar go do that" or "Brown
Sugar will do it" or "have Brown Sugar train him", referring to Plaintiff as "Brown Sugar".
Plaintiff advised Defendants of the derogatory names he was being called and he filed a
10 complaint with HR who did an "investigation". During the investigation, Plaintiff met with an
individual named Jessie whom Plaintiff is informed and believes has a close relation with
11 Byron Reyes. Plaintiff was shocked when Jessie told Plaintiff, "well, Euds is not really black,
he is just a little darker." Plaintiff asked to speak with an HR Manager.
12

13 Subsequent to his complaints, Plaintiff was treated differently by management and other
14 staff. They would "mean mug" him, give him dirty looks and nobody would talk to him. When
Plaintiff was subjected to this hostile environment, he asked for a transfer to another
15 department. The position for a welder was no longer "available" and he was placed as a
"straightener". Subsequent to his complaints and transfer, Plaintiff went to work and
sometimes there was "no work" for him and he would just have to sweep the floors for the
16 entire day. In addition to being ostracized and put on floor sweeping duties, even though
Defendant's policies required them to give Plaintiff 2-weeks notice before changing his
17 schedule, defendants would text Plaintiff last minute to not come to work. The final insult
and retaliation against Plaintiff was a reduction of his work hours from full time, 40-60
18 hours/week to 1-2 days a week. As a result of this constructive termination, Plaintiff was
forced to seek employment elsewhere.
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1 VERIFICATION

2 I, **Malek H. Shraibati**, am the **Attorney** in the above-entitled complaint. I have read
3 the foregoing complaint and know the contents thereof. The matters alleged are
4 based on information and belief, which I believe to be true.

5 On August 15, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

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Beverly Hills, California

-3-

Complaint – DFEH No. 202208-17927215

Date Filed: August 15, 2022

Form DFEH-ENF 80 RS (Revised 02/22)

EXHIBIT B

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

SIEMENS MOBILITY, INC., and DOES 1 through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

MARQUIS WALKER, an individual

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Sacramento County Superior Court

720 9th Street

Sacramento, CA 95814

CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Robert Montes, Jr., Rafii & Associates, P.C., 9100 Wilshire Blvd., Suite 465E, LA, CA 90212; (310)777.7877

DATE:
(Fecha) **DEC 19 2022** Clerk, by _____ **A. PENN**, Deputy
(Secretario) _____ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **Siemens Mobility, Inc.**

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):

EXHIBIT C

<p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO</p> <p>STREET ADDRESS: 720 Ninth STREET</p> <p>MAILING ADDRESS: 720 Ninth STREET</p> <p>CITY AND ZIPCODE: Sacramento, CA 95814-1311</p> <p>BRANCH NAME: Gordon D Schaber Courthouse</p> <p>PHONE NUMBER: (916) 874-5522</p>	<p>FOR COURT USE ONLY</p>
SHORT TITLE: Walker vs. Siemens Mobility, Inc.	
NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER TO APPEAR	CASE NUMBER: 34-2022-00331504-CU-OE-GDS

Hearing Date

The above entitled action has been set for a case management conference at 08:30 AM on 10/06/2023 in Department 43 in accordance with California Rules of Court 3.722. You must be familiar with the case and fully prepared to participate effectively in the case management conference.

Case Management Statement

All parties must file and serve a case management statement at least 15 calendar days before the case management conference. Parties are encouraged to file a single joint case management statement.

Minimum Requirements

Prior to the filing of the case management statement, the parties should have done the following:

- Served all parties named in the complaint within 60 days after the summons has been issued
- Ensured that all defendants and cross-defendants have answered, been dismissed, or had their defaults entered
- Met and conferred with all parties as required by CRC 3.724 to discuss and resolve issues set forth therein.

Tentative Ruling

Following its review of the case management statement(s), the court may determine that a case management conference is not necessary.

To determine whether an appearance is required, the parties must check the court's tentative rulings after 2:00 p.m. on the Court day before the Thursday calendar by accessing the court's internet website at www.saccourt.ca.gov/PublicCaseAccess/

Remote Appearances

Unless ordered to appear in person by the court, parties may appear remotely either telephonically or by video conference via the Zoom video/audio conference platform with notice to the court and all other parties in accordance with Code of Civil Procedure 367.75. If appearing remotely, parties are required to participate in their hearing using a device that has video and/or audio capability (i.e. computer, smartphone, or tablet). Although remote participation is not required, the court will presume all parties are appearing remotely for non-evidentiary civil hearings.

Certification Filed in Lieu of Case Management Statement

If parties in the action file a certification on a form provided by the court at least 15 calendar days prior to the date of the case management conference that the case is short cause (five hours or less of trial time), that the pleading stage is complete and that the case will be ready for trial within 60 days, the case will be exempted from any further case management requirements and will be set for trial within 60-120 days. The certification shall be filed in lieu of a case management statement.

Case Management Orders

At the case management conference, the court will consider whether the case should be ordered to judicial arbitration or referred to other forms of Alternative Dispute Resolution. Whether or not a case management conference is held, the court will issue a case management order shortly after the scheduled conference date.

Service of Case Management Notice

Unless otherwise ordered by the court, plaintiff shall serve a copy of this notice on any party to the complaint appearing after the court issued this notice. The cross-complainant shall have the same obligation with respect to the cross-complaint.

Compliance

Failure to comply with this notice or to appear at the case management conference may result in the imposition of sanctions (including dismissal of the case, striking of the answer, or payment of money).

Continuances

Case management conference will not be continued except on a showing of good cause. If your case management conference is continued on motion or by the court on its own motion all parties shall file and serve a new case management statement at least 15 calendar days before the continued case management conference.

Dated: 12/19/2022



Thadd A. Blizzard , Judge of the Superior Court

EXHIBIT D

1 Samantha C. Grant (SBN 198130)
2 Email: sgrant@reedsmith.com
3 REED SMITH LLP
4 1901 Avenue of the Stars
5 Suite 700
6 Los Angeles, CA 90067-6078
7 Telephone: +1 310 734 5200
8 Facsimile: +1 310 734 5299

6 Jeffrey N. Elkrief (SBN 321030)
7 Email: jelkrief@reedsmith.com
REED SMITH LLP
8 355 South Grand Avenue
Suite 2900
Los Angeles, CA 90071-1514
9 Telephone: +1 213 457 8000
Facsimile: +1 213 457 8080

11 Attorneys for Defendant
SIEMENS MOBILITY, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO
GORDON D. SCHABER COURTHOUSE

MARQUIS WALKER, an individual,
Plaintiff,
vs.
SIEMENS MOBILITY, INC.; and
DOES 1 through 10, inclusive,
Defendants.

Case No. 34-2022-00331504-CU-OE-GDS

[ASSIGNED TO HON. THADD A.
BLIZZARD, DEPT. 43]

Compl. Filed: December 12, 2022
Attached Documents:

Defendant SIEMENS MOBILITY, INC. (“Defendant”) hereby Answers Plaintiff MARQUIS WALKER’s (“Plaintiff”) unverified Complaint (“Complaint”) as follows:

GENERAL DENIAL

1. Pursuant to California Code of Civil Procedure Section 431.30(d), Defendant denies, generally and specifically, each and every allegation contained in Plaintiff's unverified Complaint, and denies the Complaint as a whole as it relates to Defendant. Defendant further denies, generally and specifically, that Plaintiff has been, is or will be injured or damaged in any amount, or is or will be entitled to any recovery or remedy of any type whatsoever, by reason of any act or omission of Defendant or by anyone acting on Defendant's behalf or at its direction.

AFFIRMATIVE DEFENSES

Without waiving or excusing the burden of proof of Plaintiff, or admitting that any of the following are in fact defenses upon which Defendant has any burden of proof as opposed to denials of matters to which Plaintiff has the burden of proof, or that Defendant has any burden of proof at all, Defendant asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Cause of Action)

1. The Complaint, in whole or in part, fails to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. To the extent that any of the conduct alleged in the Complaint occurred prior to the limitations period, Plaintiff's Complaint is barred, in whole or in part, by the applicable statute of limitations including, but not limited to, the one-year statute of limitations under the California Government Code Sections 12960(d) and 12965(b); the two-year statute of limitations applicable to claims for intentional torts contained in California Code of Civil Procedure ("CCP") Section 335.1; the three-year statute of limitations contained in CCP Section 338(a); the one-year statute of limitations contained in CCP Section 340(a); and the four-year "catch all" statute of limitations contained in CCP Section 343.

THIRD AFFIRMATIVE DEFENSE

(Laches)

3 3. The Complaint, and each cause of action contained therein, is barred in whole or in part
4 by the equitable doctrine of laches to the extent Plaintiff has delayed inexcusably and unreasonably in
5 the filing of this action causing substantial prejudice to Defendant.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

8 4. Plaintiff is estopped from recovering for any damages, injuries, and/or losses from
9 Defendant as a result of his conduct.

FIFTH AFFIRMATIVE DEFENSE

(Waiver)

12 5. The Complaint, and each cause of action contained therein, is barred, in whole or in
13 part, by the doctrine of waiver.

SIXTH AFFIRMATIVE DEFENSE

(Unclean Hands)

16 6. The Complaint, and each cause of action contained therein, is barred, in whole or in
17 part, by the doctrine of unclean hands.

SEVENTH AFFIRMATIVE DEFENSE

(Acquiescence/Consent)

20 7. Defendant is informed and believes, and based on such information and belief, alleges
21 that Plaintiff's Complaint, and each and every claim therein, is barred because Plaintiff acquiesced
22 or consented to the conduct about which he now complains.

EIGHTH AFFIRMATIVE DEFENSE

(No Actual Injuries)

25 8. The Complaint, and each cause of action contained therein, is barred, in whole or in
26 part, because Plaintiff has not suffered any actual injury by reason of any of Defendant's acts,
27 conduct, or omissions as alleged in the Complaint.

NINTH AFFIRMATIVE DEFENSE

(After-Acquired Evidence)

3 9. The Complaint, and each cause of action contained therein, is barred and/or the
4 alleged damages must be reduced, in whole or in part, by the after-acquired evidence of Plaintiff's
5 misconduct that has been, or may be, discovered.

TENTH AFFIRMATIVE DEFENSE

(Apportionment)

8 10. The alleged damages, injuries, and/or losses suffered by Plaintiff, if any, proximately
9 resulted from the negligence of parties, persons, and/or entities other than Defendant, and Defendant's
10 liability, if any, is limited in direct proportion to the percentage of fault actually attributable to
11 Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Economic Damages)

14 11. Defendant is informed and believes and on that basis alleges that Plaintiff has failed to
15 make reasonable efforts to mitigate the alleged damages Plaintiff claims to have suffered.
16 Accordingly, the relief, if any, to which Plaintiff is entitled must be diminished, in whole or in part,
17 by the extent of (a) the actual mitigation of Plaintiff's economic damages, and (b) any additional
18 mitigation of Plaintiff's economic damages which with reasonable diligence Plaintiff could have
19 accomplished.

TWELFTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Non-Economic Damages)

12. Defendant is informed and believes and on that basis alleges that Plaintiff has failed
13 to make reasonable efforts to mitigate the alleged non-economic damages Plaintiff claim to have
14 suffered. Accordingly, the relief, if any, to which Plaintiff is entitled must be diminished, in whole
15 or in part, by the extent of (a) the actual mitigation of Plaintiff's non-economic damages, and (b) any
16 additional mitigation of Plaintiff's non-economic damages which with reasonable diligence Plaintiff
17 could have accomplished.

THIRTEENTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

13. Plaintiff's damages are barred, in whole or in part, by the doctrine of avoidable consequences, in that among other things, Defendant is informed and believes that Plaintiff failed to pursue avoidable remedies, and bring issues/concerns to Defendant's attention in a timely manner pursuant to Defendant's complaint process.

FOURTEENTH AFFIRMATIVE DEFENSE

(Offset)

14. If Plaintiff sustained any damage as a result of the conduct alleged in the Complaint, which Defendant denies, then Defendant is entitled to an offset to the extent that Plaintiff received income from other sources.

FIFTEENTH AFFIRMATIVE DEFENSE

(Privilege)

15. The acts and statements of Defendant herein were privileged, in whole or in part, as a matter of California and/or federal law, including, but not limited to, Article I, Section 2(a) of the California Constitution, and the First and Fourteenth Amendments to the United States Constitution, and therefore cannot give rise to liability herein.

SIXTEENTH AFFIRMATIVE DEFENSE

(Managerial Discretion)

16. Plaintiff's claims are barred, in whole or in part, by the doctrine of managerial privilege or immunity.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Same Decision)

17. The Complaint, and each cause of action contained therein, is barred, in whole or in part because, even if the alleged protected status of Plaintiff had played a motivating part in any decision by Defendant regarding Plaintiff's work, which Defendant denies, Plaintiff is not entitled to any damages because Defendant would have made the same decisions even if Plaintiff's alleged protected status had not played a role in the decision.

1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 **(Good Faith/Privilege)**

3 18. The Complaint, and each cause of action contained therein, is barred, in whole or in
4 part, on the grounds that all actions of Defendant were undertaken with respect to legitimate business
5 interests, in good faith, and/or in the exercise of proper managerial discretion. Accordingly, such
6 actions were privileged.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

8 **(Legitimate, Non-Discriminatory/Non-Retalietary Reasons)**

9 19. Any actions taken by Defendant with respect to Plaintiff was for legitimate, non-
10 discriminatory and non-retaliatory reasons. If it is found that Defendant's actions were motivated by
11 non-discriminatory and/or non-retaliatory reasons as well as discriminatory and/or retaliatory
12 reasons, the non-discriminatory and non-retaliatory reasons alone would have induced Defendant to
13 make the same decision and take the same actions.

14 **TWENTIETH AFFIRMATIVE DEFENSE**

15 **(Failure to Exhaust Administrative Remedies)**

16 20. The Complaint, and each cause of action contained therein, is barred, in whole or in
17 part, on the grounds that Plaintiff has failed to exhaust administrative remedies or to comply with the
18 statutory prerequisites to bringing suit contained in the California Fair Employment and Housing
19 Act, California Government Code Section 12900 *et. seq.*

20 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21 **(Comparative Fault)**

22 21. Plaintiff's alleged damages, injuries, and/or losses, if any, were proximately caused
23 and contributed to by Plaintiff's negligence or the negligence of Plaintiff's agents, and, by reason
24 thereof, any recovery by Plaintiff against Defendant must be reduced by an amount equal to the
25 proportionate fault of Plaintiff or Plaintiff's agents pursuant to applicable law.

1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

2 **(Intervening Superseding Cause)**

3 22. Each purported claim in the Complaint is barred, in whole or in part, because the
4 alleged damages, injuries, and/or losses suffered by Plaintiff, if any, were proximately caused by or
5 contributed to by the acts or omissions of other persons and/or entities and/or unavoidable incidents
6 or conditions, without fault on the part of Defendant, which acts, omissions, incidents and/or
7 conditions were an intervening and superseding cause of the alleged damages, injuries, and/or losses,
8 if any.

9 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

10 **(Outside Course and Scope of Employment)**

11 23. To the extent any alleged wrongful conduct occurred, which Defendant denies, any
12 alleged wrongful conduct committed by any employees or agents of Defendant was outside the
13 scope and course their respective employment.

14 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

15 **(Permission/Invitation)**

16 24. By virtue of Plaintiff's conduct and actions, Plaintiff's claims are barred, in whole or
17 in part, based on the doctrines of express permission, implied permission or invitation.

18 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

19 **(Assumption of Risk)**

20 25. By virtue of Plaintiff's conduct and actions, Plaintiff's claims are barred, in whole or
21 in part, by the doctrine of assumption of risk.

22 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

23 **(Failure to Exercise Ordinary Care)**

24 26. If any loss, injury, damage, or detriment occurred as alleged in the Complaint, the
25 loss, injury or detriment was caused and contributed to by the actions of Plaintiff and, as Plaintiff did
26 not exercise ordinary care on his own behalf, his own acts and omissions proximately caused and
27 contributed to the loss, injury, damage, or detriment alleged by Plaintiff, and Plaintiff's recovery

1 from Defendant, if any, should be reduced in proportion to the percentage of Plaintiff's negligence
2 or fault.

3 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

4 **(No Entitlement to Punitive Damages)**

5 27. Plaintiff has failed to allege facts that support the recovery of any punitive or
6 exemplary damages against Defendant under California Civil Code Section 3294.

7 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

8 **(Punitive Damages/Penalties Unconstitutional)**

9 28. Plaintiff is not entitled to recover any punitive or exemplary damages, or any
10 penalties, as prayed for in the Complaint on the grounds that any award of punitive or exemplary
11 damages or penalties under California law in general, and/or any such award under California law as
12 applied to the facts of this specific action, would violate the constitutional rights of Defendant under
13 provisions of the United States and California Constitutions, including but not limited to the due
14 process clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the
15 excessive fines and cruel and unusual punishment clauses of the Eighth Amendment of the United
16 States Constitution.

17 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

18 **(Conduct Not Contrary to Public Policy)**

19 29. Any alleged wrongful conduct by Defendant does not constitute conduct in
20 contravention of the public policy of the State of California. Accordingly, neither Plaintiff's
21 Complaint nor each and every claim therein constitutes a cause of action against Defendant.

22 **THIRTIETH AFFIRMATIVE DEFENSE**

23 **(Mixed Motive-Same Action Regardless of Protected Conduct)**

24 30. Defendant denies that it discriminated against or retaliated against Plaintiff.
25 However, even assuming that Plaintiff proves Defendant wrongfully discriminated against or
26 retaliated against him, Defendant would have taken the same action if it had not relied upon the
27 unlawful ground.

1 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

2 **(Lack of Authorization, Ratification, Acts outside Scope of Employment)**

3 31. Defendant did not authorize, direct, or participate in any alleged wrongful conduct.
4 Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is barred in
5 whole or in part because Defendant did not aid, abet, counsel, or encourage the alleged act(s). If
6 Defendant's employees committed the acts alleged in Plaintiff's Complaint, although such is not
7 admitted hereby or herein, such acts were committed outside the scope of employment and, thus,
8 Defendant is not liable for such acts.

9 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

10 **(Proximate Cause/Contribution to Emotional Distress)**

11 32. Defendant alleges that if Plaintiff has suffered any emotional distress (and Defendant
12 denies that Plaintiff has suffered such distress), such emotional distress was proximately caused by
13 factors other than Plaintiff's employment, the actions of Defendant or anyone acting on Defendant's
14 behalf, or either of these.

15 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

16 **(ERISA)**

17 33. Plaintiff is not entitled to recover any compensatory or other monetary damages for
18 any alleged loss of fringe benefits, including medical or retirement benefits, on the ground that the
19 exclusive remedy for such alleged damages is the Employee Retirement Income Security Act of
20 1974, as amended, 29 U.S.C. § 1001 *et seq.*

21 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

22 **(Frivolous Action)**

23 34. Plaintiff's Complaint, and each and every claim therein, is frivolous and known by
24 Plaintiff to be frivolous and without foundation in fact or law. Furthermore, this suit is being
25 pursued in bad faith for vexatious reasons for the purpose of harassing Defendant. Accordingly,
26 Defendant is entitled to recover its attorneys' fees and other appropriate costs and expenses.

1 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

2 **(Reservation of Rights)**

3 35. Defendant presently has insufficient knowledge or information on which to form a
4 belief as to whether it may have additional, as yet unstated affirmative defenses available, and it
5 reserves the right to assert additional defenses in the event that investigation or discovery indicate
6 that they would be appropriate.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Defendant prays for judgment as follows:

- 9 (1) That Plaintiff take nothing by reason of the Complaint;
10 (2) That the Complaint be dismissed in its entirety, with prejudice, in favor of Defendant;
11 (3) That Defendant be awarded its costs of suit incurred herein;
12 (4) That Defendant be awarded its attorneys' fees incurred herein;
13 (5) That Defendant be granted such further and other relief as the Court deems just and
14 proper.

15 DATED: February 1, 2023

16 REED SMITH LLP

17 By:

18 
19 Samantha C. Grant
20 Jeffrey N. Elkrief
21 Attorneys for Defendant
22 SIEMENS MOBILITY, INC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is REED SMITH LLP, 355 S, Grand Avenue, Suite 2900, Los Angeles, CA 90071.

On February 1, 2023, I served the following document(s) by the method indicated below:

**DEFENDANT SIEMENS MOBILITY INC.'S ANSWER TO PLAINTIFF'S UNVERIFIED
COMPLAINT**

- by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in this Declaration.

by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below. A signed proof of service by the process server or delivery service will be filed shortly.

by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business day following the date of consignment to the address(es) set forth below. A copy of the consignment slip is attached to this proof of service.

by transmitting via email to the parties at the email addresses listed below:

Robert Montes, Jr. robertgrallilaw.com RAFII & ASSOCIATES, P.C. 9100 Wilshire Boulevard, Suite 465E Beverly Hills, California 90212 Telephone: 310.777.7877 Facsimile: 310.777.7855	Attorneys for Plaintiff
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I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 1, 2023, at Los Angeles, California.

Charlyn Jones